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| APPLICATION NO.                           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/796,816                                | 03/09/2004  | Leland N. Saunders   | RAP04 P-644A        | 2060             |
| 28101                                     | 7590        | 05/18/2006           | EXAMINER            |                  |
| VAN DYKE, GARDNER, LINN AND BURKHART, LLP |             |                      | GREENHUT, CHARLES N |                  |
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| P.O. BOX 888695                           |             |                      | ART UNIT            |                  |
| GRAND RAPIDS, MI 49588-8695               |             |                      | PAPER NUMBER        |                  |
|   |             |                      | 3652                |                  |

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |  |  |  |
|------------------------------|--|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/796,816   | <b>Applicant(s)</b><br>SAUNDERS ET AL. |  |
|                              | <b>Examiner</b><br>Charles N. Greenhut | <b>Art Unit</b><br>3652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**I. Claim Objections**

1. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11 improperly depends from cancelled claim 10.

**II. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. With respect to claim 1, it is unclear what is defined by the phrase, “a first group of totes of the first group of totes” in line 6.

1.2. With respect to claim 1, it is unclear whether “the first group of totes” in line 8, 13, 15-16 refers to the group of totes or the group of totes of the first group of totes.

1.3. Claim 1 recites the limitation “said indicators at the first picking location” in line 9. There is insufficient antecedent basis for this limitation in the claim. Antecedent basis is provided only for an indicator at each picking location.

1.4. With respect to claim 10, the scope of claim 10 can not be determined since it depends from a cancelled claim.

**III. Claim Rejections - 35 USC § 102**

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1-52 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SPINDLER (US 5,509,538 A).

1.1. With respect to claim 1, SPINDLER discloses arranging products in first row (e.g., a position of each 12), aligning a first group of totes (28) at a first picking location (zone), locating an indicator and indicating products to be picked for the tote (via 40), indicating a tote (via 42), picking and placing the indicated products, and indexing the totes (Fig. 1) in a direction parallel to the row of picking locations.

1.2. With respect to claim 2, SPINDLER additionally discloses conveyors (24)/(26).

1.3. With respect to claim 3, SPINDLER additionally discloses automatically driving the conveyor (24).

1.4. With respect to claim 4, SPINDLER additionally discloses flow racks having inlet (14) and discharge (18) side.

1.5. With respect to claim 5, SPINDLER additionally discloses providing and actuating lights (LEDs on 34).

1.6. With respect to claim 6, SPINDLER additionally discloses providing a designated light (40).

1.7. With respect to claim 7, SPINDLER additionally discloses an indicator for each tote (34)

- 1.8. With respect to claim 8, SPINDLER additionally discloses providing a light (LEDs on 34).
- 1.9. With respect to claim 9, SPINDLER additionally discloses providing a light at picking locations (LEDs on 34).
- 1.10. With respect to claim 11, SPINDLER additionally discloses indexing a group of totes (Fig. 1).
- 1.11. With respect to claim 12, SPINDLER discloses providing products in a first and second row of picking bays (12) having an induct (14) and discharge (18) side, an isle between the rows for an operator (20), aligning a first and second groups of totes with an upstream picking bay (Fig. 1), indicating a product to be picked (40), indexing parallel to the rows (Fig. 1).
- 1.12. With respect to claim 13, SPINDER additionally discloses a third group of totes.
- 1.13. With respect to claim 14, SPINDER additionally discloses indexing and aligning the third group.
- 1.14. With respect to claim 15, SPINDLER additionally discloses first and second conveyors (24).
- 1.15. With respect to claim 16, SPINDLER additionally discloses flow racks (12)
- 1.16. With respect to claim 17, SPINDLER additionally discloses lights (at 34).
- 1.17. With respect to claim 18, SPINDLER additionally discloses actuating the lights when a product is to be picked (Fig. 2).
- 1.18. With respect to claim 19, SPINDLER additionally discloses a group of three totes (Fig. 1).

- 1.19. With respect to claim 20, SPINDLER additionally discloses a control system (32).
- 1.20. With respect to claim 21, SPINDLER additionally discloses driving the conveyors with the control system (25).
- 1.21. With respect to claim 22, SPINDLER additionally discloses detecting when a product has been picked (Col 9).
- 1.22. With respect to claim 23, SPINDLER additionally discloses an actuator (Col. 9).
- 1.23. With respect to claim 24, SPINDLER discloses a means for supporting products (12), means for aligning totes (24), means for identifying each tote (34), means for indicating which products are to be picked (40), means for indexing (24) in a direction parallel to the rows, and a control system (32)/(25).
- 1.24. With respect to claim 25, SPINDLER additionally discloses racks (12)
- 1.25. With respect to claim 26, SPINDLER additionally discloses an induct (14) and discharge (18) side.
- 1.26. With respect to claim 27, SPINDLER additionally discloses first and second conveyors (24).
- 1.27. With respect to claim 28, SPINDLER additionally discloses selectively driven conveyors (24).
- 1.28. With respect to claim 29, SPINDLER additionally discloses lights (at 34).
- 1.29. With respect to claim 30, SPINDLER discloses a plurality of racks (12), plurality of totes (28), first and second conveyor (24), and controller (32)/(25) actuating the conveyor to index the totes parallel to the rows.

- 1.30. With respect to claim 31, SPINDLER additionally discloses induct (14) and discharge (18) sides.
- 1.31. With respect to claim 32, SPINDLER additionally discloses indicators (Fig. 2).
- 1.32. With respect to claim 33, SPINDLER additionally discloses lights (at 34).
- 1.33. With respect to claim 34, SPINDLER additionally discloses displays identifying a tote (44).
- 1.34. With respect to claim 35, SPINDLER additionally discloses a tote identifier (Col. 8).
- 1.35. With respect to claim 36, SPINDLER additionally discloses a tote indicator (Col. 8).
- 1.36. With respect to claim 37, SPINDLER additionally discloses indicators (34) at the picking locations (18).
- 1.37. With respect to claim 38, SPINDLER additionally discloses indicators (34) at the conveyors (24).
- 1.38. With respect to claim 39, SPINDLER additionally discloses the indicator displaying a mode of operation (e.g., pick, put, split, etc...)
- 1.39. With respect to claim 40, SPINDLER additionally discloses the control system detecting when a product is picked (Col 9).
- 1.40. With respect to claim 41, SPINDLER discloses providing products in a first and second row of picking bays (12) having an induct (14) and discharge (18) side, an aisle for operator (20) access, aligning first and second totes (Fig. 1), indicating

products to be picked for the respective totes (Fig. 2), and indexing parallel to the rows (Fig. 1).

1.41. With respect to claim 42, SPINDLER additionally discloses indicating products to be picked after indexing.

1.42. With respect to claim 43, SPINDLER additionally discloses indexing a third tote (Fig. 1).

1.43. With respect to claim 44, SPINDLER additionally discloses first and second conveyors (24).

1.44. With respect to claim 45, SPINDLER additionally discloses flow racks having induct (14) and discharge (18) sides.

1.45. With respect to claim 46, SPINDLER additionally discloses actuating lights (at 34).

1.46. With respect to claim 47, SPINDLER additionally discloses a light at each picking location (Fig. 1).

1.47. With respect to claim 48, SPINDLER additionally discloses groups of totes (Fig. 1).

1.48. With respect to claim 49, SPINDLER additionally discloses indexing a group (Fig. 1).

1.49. With respect to claim 50, SPINDLER additionally discloses a control system (32)/(25).

1.50. With respect to claim 51, SPINDLER additionally discloses detecting when a product has been picked (Col. 9).

1.51. With respect to claim 52, SPINDLER additionally discloses an actuator (e.g., "done" button)



#### **IV. Response to Applicant's Arguments**

Applicant's arguments entered 4/3/06 have been fully considered but are not persuasive.

1. Applicant argues that claims 1, 12, 24, 30, and 41 amended, patentably defines over SPINDLER because SPINDLER does not disclose indexing the totes in a direction parallel to the row of adjacent picking locations. This argument is not persuasive. The flow rack (12) or corresponding locations at successive flow racks 12a, 12b, 12c, etc..., i.e., along a vertical direction of Fig. 3, could be considered a "row of adjacent picking locations" within the broadest reasonable interpretation of that term. Indexing, again in the vertical direction of Fig. 3, would then be "in a direction parallel to the row of adjacent picking locations." This interpretation could be applied to claims 1 and 30 because unlike claims 12 and 41 there is no requirement that the rows have an aisle or space therebetween. Note that claim 30 requires merely a "means for supporting...in spaced apart rows" not necessarily that the rows actually be spaced apart. Even if the flow racks (12) were considered the "rows," as necessitated by claims 12 and 41, Fig. 3 and Fig. 4, clearly show track 26 having right angle turns, therefore disclosing "[indexing] in a direction parallel to the row of adjacent picking locations." Furthermore, although the preferred embodiment of SPINDER discloses an "end picking" arrangement SPINDER goes on to suggest that the form of the pick face is not critical (Col. 6, Li. 1-7) and the pick face may take a variety of forms including "aisle picking" (Col. 3, Li. 3-8). This clearly suggests modifying the SPINDER system for use with a pick face more similar to that disclosed in applicant's preferred embodiment. While the SPINDER disclosure is sufficient to anticipate claims 1, 12, 30, and 41, as amended, even if it weren't, it would certainly render them obvious.

2. Applicant argues that claim 1, as amended, patentably defines over SPINDLER because SPINDLER does not disclose “locating an indicator at each picking location.” This argument is not persuasive. Firstly, this argument improperly assumes that the term “locating an indicator at each picking location” excludes locating the indicator on the car (22) as it is moved to each picking zone. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Secondly, even if the indicator were required to be, for example, on each row or adjacent the products to be picked, such a modification is disclosed in SPINDLER at (Col. 7, Li. 53-68).


#### **V. Conclusion**

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG

  
DEAN J. KRAMER  
PRIMARY EXAMINER 5/15/06